Nos. 77-874 and 77-1463

In the Supreme Court of the United States

OCTOBER TERM, 1978

GENANETT ALEXANDER, ET AL., PETITIONERS

v.

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.

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OPINIONS BELOW

The opinion of the court of appeals in No. 77-874 (77-874 Pet. App. A-6 to A-16) is reported at 555

F.2d 166. The opinion of the district court in No. 77-874 (77-874 Pet. App. A-1 to A-5) is unreported.

The opinion of the court of appeals in No. 77-1463 (77-1463 Pet. App. 1-A to 49-A) is reported at 571 F.2d 590. The opinion of the district court in No. 77-1463 (77-1463 Pet. App. 52A-54A) is unreported. Two prior opinions of the district court are reported at 389 F. Supp. 99 and 396 F. Supp. 1235.

JURISDICTION

The judgment of the court of appeals in No. 77-874 was entered on May 20, 1977. A petition for rehearing was denied on September 19, 1977 (77-874 Pet. App. A-17 to A-18). The petition for a writ of certiorari was filed on December 16, 1977, and was granted on June 19, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

The judgment of the court of appeals in No. 77-1463 (77-1463 Pet. App. 50A-51-A) was entered on November 14, 1977. On February 3, 1978, Mr. Justice Brennan extended the time within which to file a petition for a writ of certiorari to and including April 13, 1978. The petition was filed on that date and was granted on June 19, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether tenants who are ordered to vacate a housing project that has been conveyed to the Department of Housing and Urban Development after default by the project's sponsor are "displaced persons" entitled to relocation benefits under the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, where the order to vacate is unrelated to the Department's acquisition of the property.

STATUTE INVOLVED

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, provides in pertinent part:

> Section 4601. Definitions.
>
> As used in this chapter —
>
> * * * * *
>
> (6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.
>
> * * * * *
>
> Section 4621. Declaration of policy.
>
> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.
>
> Section 4622. Moving and related expenses.
>
> (a) General provision.
>
> Whenever the acquisition of real property for a program or project undertaken by a

Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Displacement from dwelling; election of payments; moving expense and dislocation allowance.

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

* * * * *

Section 4624. Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this subchapter, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title[1] which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or,

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623(a)(1)(C) of this title) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to

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[1] Section 4623 deals with "Replacement housing for homeowner[s] * * *."

public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Section 4625. Relocation assistance advisory services.

(a) Program for displaced persons and economically injured occupants of adjacent property.

Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

* * * * *

(c) Measures, facilities, or services; description.

Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

STATEMENT

1. ***Alexander*** **(No. 77-874).**

Petitioners in No. 77-874 are former tenants of the Riverhouse Towers Apartments, a low-income housing project in Indianapolis, Indiana. The project was constructed in the late 1960's by Riverhouse Apartments, Inc., a private nonprofit corporation (A. 19, 27). The corporation had secured financing for the project through a mortgage insured and subsidized by the Department of Housing and Urban Development pursuant to Section 221(d)(3) of the National Housing Act, 12 U.S.C. 1715*l* (d)(3). The mortgage insurance agreement provided that if Riverhouse Apartments, Inc., defaulted on the loan, the mortgagee could recover the full balance of the loan from the Department in exchange for a transfer of the mortgage on the project to the Department (77-874 Pet. App. A-2, A-6 to A-7).

In 1970 the corporation fell into default on the loan, and the mortgagee assigned the mortgage to the Department in exchange for payment of the mortgage insurance benefits. In May 1973, after continuing default by Riverhouse Apartments, Inc., the Department initiated foreclosure proceedings. During the pendency of those proceedings, the project was operated by a court-appointed receiver. On

June 6, 1974, a decree of foreclosure was entered, and on August 13, 1974, the Department purchased the property at the foreclosure sale (77-874 Pet. App. A-2, A-7; A. 20, 27-28).

After the acquisition, the Department attempted to continue operating the project. It hired a management agent and through the agent sought to make needed repairs on the property. The Department then concluded, however, that because of concern for the safety of the residents and the drastic deterioration in the condition of the premises, the project would have to be closed. Accordingly, in November 1974 the Department had notices to quit served on all the remaining tenants (77-874 Pet. App. A-2 to A-3, A-7; A. 28, 43-46).

Petitioners then brought this action in the United States District Court for the Southern District of Indiana, claiming that they were entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (Relocation Act).[2] The district court denied relief, holding that the Relocation Act did not apply to the Department's termination of the housing project (77-874 Pet. App. A-1 to A-5). According to the district court, the "termination of the present use of Riverhouse Tower Apart-

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[2] Certain of the petitioners also sought return of their security deposits, which had been withheld for nonpayment of rent. That claim was denied in the district court and the court of appeals (77-874 Pet. App. A-5, A-13 to A-16), and the petitioners have not renewed it here.

ments is not a 'program or project undertaken by a federal agency' " as that phrase is used in the Relocation Act, and petitioners therefore "are not entitled to relocation assistance and payments" under the Act (*id.* at A-4).

The court of appeals affirmed (*id.* at A-6 to A-16). The court noted that the Relocation Act had been passed in an effort "to provide uniform treatment for those forced to relocate as a result of federal and federally aided public improvement programs" (*id.* at A-9). In order for benefits to be available under the Relocation Act, the court observed, the person seeking the benefits must have been displaced "for a program or project undertaken by a Federal agency, or with Federal financial assistance" (42 U.S.C. 4601(6)). In this case, the court held, the Department's order to the tenants of Riverhouse to vacate the project was not for such a program or project (77-874 Pet. App. A-11). In the court's view, persons displaced by "programs" and "projects" within the meaning of the Relocation Act "are persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need" (*id.* at A-12). The Department's order to vacate Riverhouse Towers could not be considered part of a "program or project" within the contemplation of the Relocation Act because the decision to abandon the project represented only a "sad recognition that the Riverhouse Project failed to accomplish the government's objective of providing adequate

public housing for the needy" (*id.* at A-12). The court added that a decision to terminate a project could not itself be deemed a "program" or "project" in the absence of "some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole" (*id.* at A-13).

2. *Cole* (No. 77-1463).

The Sky Tower apartment complex in the Anacostia section of Washington, D.C., was built in the 1950's. The 19 buildings in the complex contained 217 small "garden" apartments. In 1970, a nonprofit corporation purchased Sky Tower and attempted to rehabilitate the complex by converting the units into larger apartments intended for low- and moderate-income families. The Department of Housing and Urban Development provided assistance to the corporation and the tenants by insuring the mortgage on the complex, subsidizing the mortgage interest payments, and paying rent supplements for a number of the households (77-1463 Pet. App. 2-A to 3-A).

In spite of this assistance, the rehabilitation effort failed. After the original general contractor defaulted on performance of the rehabilitation work, the Department took the unusual step of permitting an increase in the amount of the insured mortgage, along with a substitution of contractors. But the second contractor also abandoned work and, in addition, placed a lien on the property, whereupon the

mortgagee declared the nonprofit owner in default and foreclosed (77-1463 Pet. App. 3-A). The mortgagee, exercising its rights under the mortgage insurance contract, then conveyed title to the project to the Department in exchange for the statutory mortgage insurance benefits. The Department took title in June 1973 (77-1463 Pet. App. 3-A).

The Department hired a management firm to operate the project and executed new month-to-month leases with the tenants on the same terms as their previous leases. By September 1974, however, the Department concluded that in view of the deteriorated condition of the project, further efforts at rehabilitation would be futile. Department officials decided that the project should be demolished and the land sold to developers for the construction of single-family homes in accordance with the master plan of the District of Columbia government (77-1463 Pet. App. 3-A, 11-A). Accordingly, in September 1974 the Department had the management firm give notice to the 72 families remaining in Sky Tower to vacate their apartments. Tenants who were current in their rent were granted $300 for moving expenses and were exempted from payment of their last month's rent (77-1463 Pet. App. 3-A to 4-A).

Respondents, a group of Sky Tower tenants, then brought this action in the United States District Court for the District of Columbia, challenging the Department's decision to raze Sky Tower rather than rehabilitate it and seeking injunctive relief and damages. One of their claims was that the Department

had failed to provide them with benefits under the Relocation Act (77-1463 Pet. App. 4-A).

The district court issued a preliminary injunction barring the Department from further demolition or evictions at the project, requiring it to rehabilitate certain of the buildings, and ordering it to offer the tenants who had moved out the opportunity to move back in at the Department's expense (77-1463 Pet. App. 4-A to 5-A).[3] *Cole* v. *Lynn*, 389 F. Supp. 99 (D. D.C. 1975).

Both sides then moved for summary judgment on respondents' claim that the tenants who had vacated their apartments were entitled to Relocation Act benefits.[4] The district court granted respondents' motion in part (77-1463 Pet. App. 52-A to 54-A), holding that tenants who had vacated their apartments as a result of the Department's notice to quit were entitled to a prorated portion of the Relocation Act benefits covering the period between the time they left the project and August 1, 1975, the date that

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[3] Only 18 of the 55 families who had vacated the project pursuant to the Department's notice elected to return after the injunction was entered (77-1463 Pet. App. 18-A).

[4] While the appeal on the Relocation Act issue was pending, the district court, with the consent of the parties, remanded the question of the disposition of Sky Tower to the Department for reconsideration in light of the concerns expressed in the district court's opinion on the motion for a preliminary injunction. The Department ultimately reached an agreement with the District of Columbia government under which Sky Tower would be transferred to the District of Columbia, with the Department providing substantial subsidies for its continued operation (77-1463 Pet. App. 7-A n.17).

they were permitted to return under the district court's injunction (77-1463 Pet. App. 7-A). The district court certified the Relocation Act claims for immediate appeal under Fed. R. Civ. P. 54(b), and both sides appealed.

The court of appeals affirmed in part and reversed in part, with one judge dissenting (77-1463 Pet. App. 19-A). The court held that the tenants who left Sky Tower after receiving the Department's notice to quit were "displaced persons" within the meaning of Section 101(6) of the Relocation Act, 42 U.S.C. 4601 (6), and were therefore entitled to the Act's benefits. In addition, the court held that those tenants who did not return to Sky Tower when the district court's injunction made their return possible were nevertheless entitled to full Relocation Act benefits, not prorated benefits terminating when they could have returned to the project, as the district court had held (77-1463 Pet. App. 17-A to 19-A).

The court of appeals noted that the definition of "displaced person" in the Relocation Act contains two clauses—the "acquisition" clause and the "notice" clause. In the court's view, these two clauses provide (77-1463 Pet. App. 9-A)

> two alternative grounds of eligibility: having moved as a result of the acquisition of property for a federal program or project (the acquisition clause); *or* having moved as a result of a written order of the acquiring agency to vacate the property for a federal program or project (the notice clause).

Because it held that the respondents qualified for benefits under the "notice" clause (*ibid.*), the court did not decide whether they would also qualify under the "acquisition" clause (*id.* at 12-A n.28). The court concluded that the "notice" clause was satisfied because (1) the Department had acquired Sky Tower, and was thus the "acquiring agency"; (2) the Department had served on each tenant a written order to vacate; (3) the respondents vacated their apartments as a result of those orders; and (4) the tenants "were ordered to vacate their apartments 'for a program or project undertaken by a Federal agency,' namely, the demolition of the buildings" (*id.* at 9-A to 10-A). The demolition of the Sky Tower buildings was a "program or project" within the meaning of the Act, the court held, because the demolition "was part of a program to 'eliminate blight,'" and thus constituted part of "a federal project 'designed for the benefit of the public as a whole'" (*id.* at 11-A, quoting from 42 U.S.C. 4621).

In dissent, Judge Wilkey disagreed with the court's conclusion that the respondents were "displaced persons" within the meaning of the "notice" clause of Section 101(6) of the Act. In Judge Wilkey's view, the statute was intended to provide benefits for persons who move as the result of a federal agency's voluntary acquisition or proposed acquisition of property for a federal program or project (77-1463 Pet. App. 23-A). In his view, involuntary and random acquisitions, such as the Department's acquisition of Sky Tower after the mortgagor's default and the

mortgagee's transfer of title to the Department in exchange for mortgage insurance benefits, are not acquisitions "for a [federal] program or project" within the meaning of the Act (*id.* at 28-A to 32-A). Judge Wilkey further concluded that the "notice" clause was not intended to provide a basis for granting relocation benefits entirely independent of the "acquisition" clause, but was meant to provide benefits for persons who are ordered to vacate their dwellings in anticipation of an acquisition, whether or not that acquisition ultimately takes place (*id.* at 33-A to 46-A). Thus, in Judge Wilkey's view, respondents were not "displaced persons" under either the "acquisition" clause or the "notice" clause, because the Department did not acquire Sky Tower "for a [federal] program or project."

SUMMARY OF ARGUMENT

The Relocation Act provides a variety of benefits to persons who meet the statutory criteria for eligibility. Under specified circumstances, the Act provides moving expenses of up to $300 (42 U.S.C. 4622), a dislocation allowance of $200 (*ibid.*), replacement housing payments of up to $15,000 for homeowners and $4,000 for tenants (42 U.S.C. 4623, 4624), and relocation assistance advisory services (42 U.S.C. 4625). The terms of eligibility for these benefits vary somewhat. Moving expenses and a dislocation allowance are available to any "displaced person" whenever "the acquisition of real property for a program or project undertaken by a Federal agency in

any State will result in the displacement" of that person. 42 U.S.C. 4622(a). Replacement housing payments are available to any "displaced person" who, in the case of a tenant, lawfully occupied his or her dwelling "for not less than ninety days prior to the initiation of negotiations for the acquisition of such dwelling." 42 U.S.C. 4624. Relocation assistance advisory services are available to any displaced person whenever "the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement" of that person. 42 U.S.C. 4625(a).

Each of these benefits is available only if the applicant is a "displaced person" within the meaning of the Act. The definition of "displaced person" is contained in Section 101(6) of the Act, 42 U.S.C. 4601(6), and provides in pertinent part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance, * * *.

The definition contains two clauses: the "acquisition" clause, which reaches those who move as a result of an actual acquisition of property for a program or project undertaken by a federal agency, and the "notice" or "written order" clause, which reaches those who move as the result of a written

order by the acquiring agency to vacate the premises, where (in our view) the acquisition or (in our opponents' view) either the acquisition or the written order is for a program or project undertaken by a federal agency.

Plaintiffs[5] argue that they fall within the reach of the "written order" clause of the definition. On their reading, that clause includes all persons who are given a written order to move from property owned by a federal agency, if they are ordered to vacate for a federal program or project. Both groups of plaintiffs are entitled to benefits, they argue, because they were given written orders to move from property that had been acquired by the Department after foreclosure, and because the orders to vacate were for a federal program or project, namely, the demolition or sale of the housing projects from which they were ordered to move.

In our view, this argument is in error for two reasons. First, the statute does not extend relocation benefits generally to persons who are ordered to move from federally owned property; benefits are available only to persons who move or are ordered to move in connection with a federal agency's acquisition or proposed acquisition of the property. A different conclusion would have wide and unintended consequences, making the statutory benefits available to persons

[5] The tenants in these two consolidated cases are petitioners in No. 77-864 and respondents in No. 77-1463. For convenience, we refer to them as "plaintiffs" when referring to them jointly.

ordered to move from all varieties of federally owned property on which persons reside (and from property owned by state and local governments, when the order to move is for a program or project involving federal financial assistance). The language, the structure, and the legislative history of the Act all support the view that the written order clause was intended only to supplement the acquisition clause, by including as "displaced persons" those who move from real property in response to an order issued in connection with the acquisition or proposed acquisition of the property. By virtue of the written order clause, such persons become eligible for relocation benefits without waiting for the acquisition to take place, and without regard for whether or not it ultimately does take place.

In this case, the plaintiffs were not ordered or otherwise forced to move in connection with the federal agency's acquisition of the housing projects; they were ordered to move well after the acquisition, when the agency determined that the housing project could not feasibly continue in operation. Plaintiffs are thus in the same position as any persons who are ordered to move from federally owned property. In the absence of an acquisition or proposed acquisition of the property that produces their dislocation, or a written order connected with such an acquisition or proposed acquisition, such persons are not entitled to the benefits provided by the Relocation Act.

The second flaw in plaintiffs' argument is that it is the acquisition of the property—not the written order

to vacate—which must be for a federal "program or project" in order for Relocation Act benefits to be available. Even if the demolition or sale of a housing project were considered a "program or project" within the meaning of the statute, that would not be sufficient unless the acquisition of the property, not simply the order to vacate, was intended for that purpose. In this case, the agency's acquisition of Sky Tower occurred as the result of the mortgagee's exercise of its rights under the mortgage insurance agreement, and the acquisition of Riverhouse Towers occurred as the result of the foreclosure sale following the mortgagor's default. In neither instance can the agency's acquisition be considered to have been "for a program or project undertaken by a Federal agency," within the meaning of the Relocation Act.

Persons displaced from property owned by a federal agency may well suffer economic and personal hardship as a result of the displacement. Recognizing this, the Department has taken steps to minimize such displacements and to compensate those who are unavoidably displaced. But the hardship that may be suffered by individuals who are ordered to move from federally owned property does not warrant expanding the reach of the Relocation Act well beyond the context that Congress intended for it. Extension of the Act's benefits into a broad new area is a matter for Congress, not for this Court.

ARGUMENT

I.

THE RELOCATION ACT PROVIDES BENEFITS ONLY TO PERSONS WHO MOVE AS A RESULT OF AN ACQUISITION OF REAL PROPERTY OR A WRITTEN ORDER CONNECTED WITH AN ACQUISITION OR PROPOSED ACQUISITION

A. The "Plain Meaning" of the Written Order Clause Does Not Support the Interpretation Urged by Plaintiffs

Plaintiffs contend that the plain language of the Relocation Act compels the conclusion that persons given a written order to vacate federally owned property so that the property can be sold or demolished are entitled to relocation benefits under the Act. They base their argument on the written order clause in the statutory definition of "displaced person," 42 U.S.C. 4601(6). That definition provides in pertinent part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.

The written order clause brings within the definition of "displaced person" a tenant who is forced to move "as the result of the written order of the acquiring agency" to vacate real property, provided that the definition's "program or project" require-

ment is also met (see pages 54-63, *infra*).[6] Plaintiffs construe the written order clause as if it read, "as the result of the written order of the agency *that is acquiring or has previously acquired* real property to vacate [that] property." In contrast, we construe the clause to mean: "as the result of the written order of the agency *that is acquiring* real property to vacate [that] property."

Plaintiffs assert that the term "acquiring agency" must be read to include an agency that has acquired the property at some time in the past. But it is at least equally plausible from the language alone that the term denotes an agency that is engaged in an

[6] The statute refers to "a program or project undertaken by a Federal agency, or with Federal financial assistance" (42 U.S.C. 4601(6)), but it has uniformly been held that the phrase "with Federal financial assistance" refers only to programs undertaken with federal financial assistance by agencies of state governments (including local governments). See *Moorer* v. *Department of Housing and Urban Development*, 561 F.2d 175 (8th Cir. 1977), cert. denied, No. 77-6087 (May 22, 1978); *Parlane Sportswear Co.* v. *Weinberger*, 513 F.2d 835, 837 (1st Cir.), cert. denied, 423 U.S. 925 (1975); *Dawson* v. *U.S. Department of Housing and Urban Development*, 428 F. Supp. 328 (N.D. Ga. 1976). The legislative history confirms this interpretation. The House Committee Report refers to "a program or project undertaken by a Federal agency, or by a State agency with Federal financial assistance." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 3 (1970). An effort was made in 1972 to amend the Relocation Act to include displacements caused by acquisitions for private projects enjoying federal financial assistance (see Part (e) of S. 1819, 118 Cong. Rec. 12342-12343 (1972), proposing a new Section 223 for the Relocation Act), but that effort failed. Since there is no claim that any of the plaintiffs were displaced for a state program receiving financial assistance, we have limited our reference throughout to federal programs or projects.

acquisition. If Congress had meant "the written order of the agency that is acquiring or that at some time in the past has acquired the property," it could have said that. What is said was "acquiring agency."

Because the language of the written order clause by no means compels the interpretation urged by plaintiffs, the "plain meaning" rule, relied on by plaintiffs (77-874 Br. 16-17; 77-1463 Br. 14-16), is not applicable. Moreover, plaintiffs' interpretation of the written order clause provides special reason for inquiring into the legislative history and the statutory context of that clause. For plaintiffs' interpretation would markedly expand what has been thought to be the scope of the Relocation Act, extending the Act beyond the context of property acquisitions and making it applicable to all persons ordered to move from federally owned property.

Plaintiffs' interpretation would apparently make benefits available under the Act to persons ordered to move from federally owned housing projects for breaking the rules of the project or failing to pay rent, or to persons ordered to move from federally financed homes after foreclosure of their mortgages for failure to make mortgage payments (see 42 U.S.C. 4623).[7] Plaintiffs' interpretation would apparently

[7] Plaintiffs might argue that displacements of this kind would not fall within the coverage of the Relocation Act because the order to move would not be "for a program or project" of the federal agency. But if an order to move issued in an effort to "eliminate blight" or to minimize losses on an entire housing project is "for a program or project," as plaintiffs contend, it seems equally plausible to reach that conclusion about an order issued to enforce the rules of the project or to minimize losses on particular units.

reach any branch of the federal government that provides living accommodations on property it owns and then decides to terminate those accommodations in order to use the premises or the land for some other program or project. If the Army was closing a base and therefore ordered its personnel to vacate on-base housing, or if at a continuing base it decided to terminate certain on-base housing to make way for some program or project, it would apparently be required to pay relocation benefits under the Act to the persons ordered to move.

In addition, the term "agency" in Section 101(6) includes an agency of a state or local government that is undertaking a program or project "with Federal financial assistance" (see page 22, note 6, *supra*). Hence, on plaintiffs' interpretation of "acquiring agency," the entitlement to relocation benefits under the written order clause would extend to persons ordered to move from property owned by state and local governments to make way for programs or projects involving federal financial assistance.[8]

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[8] For example, under the Department's college housing program, 12 U.S.C. 1749 *et seq.*, if a state university decided to make use of federal funds to convert long-owned residential property into college dormitories, it would apparently be required, on plaintiffs' theory, to pay relocation benefits to the tenants who had been living on its property and were now ordered to move. Moreover, if the university decided to raze an existing dormitory, or faculty housing, in order to construct a laboratory or other facility with the aid of federal funds, it would apparently have to pay relocation benefits, on plaintiffs' theory, to the students or faculty whom it ordered to move.

Such results would be startling. They would have little relation to the basic purpose of the Relocation Act, which is to provide benefits in excess of the amounts payable under traditional concepts of just compensation to persons whose businesses or dwellings are taken by the government to make way for public projects. H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 1-2 (1970); *Caramico* v. *Secretary of the Department of Housing and Urban Development*, 509 F.2d 694, 698-699 (2d Cir. 1974). Hence, even if the detached language of the written order clause appeared plainly to support plaintiffs' construction, the Court would look behind the statutory language to determine the scope Congress intended for the clause. As the Court said in *United States* v. *American Trucking Association*, 310 U.S. 534, 542-544 (1940) (footnotes omitted):

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the

> purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination."

See also *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616, 628 (1975); *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 619 (1967); *Sorrells* v. *United States*, 287 U.S. 435, 446-448 (1932); *United States* v. *Ryan*, 284 U.S. 167, 175 (1931).[9]

In this case, the light shed by both the structure and the legislative history of the Act is unusually clear. It shows that Congress intended, not the broad reading of the written order clause proposed by

[9] Contrary to plaintiffs' suggestion, the Court's recent decision in *Tennessee Valley Authority* v. *Hill*, No. 76-1701 (June 15, 1978), is not to the contrary. In that case the Court found both that the literal meaning of Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536, was clear and that there was nothing in the structure or the history of the Act "to support the assertion that the literal meaning of § 7 should not apply in this case." Slip op. 32 n.33.

plaintiffs, but the narrower interpretation that we urge.

B. The Structure of the Relocation Act Indicates That Benefits Were Intended To Be Available Only When the Claimant Is Forced To Move in Connection With an Acquisition Or a Proposed Acquisition of Real Property

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 has two parts: one part governs procedures that federal agencies must follow when acquiring land from private owners for federal programs (42 U.S.C. 4651-4655); the other part governs the provision of relocation benefits for persons "displaced" by such programs (42 U.S.C. 4601-4638). The juxtaposition is not fortuitous; both parts reflect the basic purpose of the Act, which is to provide fair, equitable, and consistent treatment of persons affected by the acquisition of property for federal projects. See H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 1-2 (1970). Both parts of the Act were intended to alleviate some of the hardships caused by governmental takings of property, in part by providing compensation for interests not compensable under the law of eminent domain. *Ibid.* Thus, the focus of the Act is on governmental acquisitions of property, and the relocation benefit provisions are accordingly keyed to displacements caused by such acquisitions.

More specifically, the four sections of the Act that govern the availability of benefits to "displaced persons" all provide benefits only in the context of an

acquisition or proposed acquisition of property. Sections 202 and 205 of the Act, 42 U.S.C. 4622, 4625, provide for payment of moving and related expenses and for relocation assistance advisory services. Under both of these sections, the benefits are available only when "the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person * * *" (See the text of the sections at pages 3-4, 6-8, *supra.*) Similarly, Sections 203 and 204 of the Act, 42 U.S.C. 4623 and 4624, govern the payments for replacement housing to displaced homeowners and tenants. Under both of these sections, the benefits are available only to persons who occupied their dwellings for a prescribed period of time "prior to the initiation of negotiations for the acquisition of the property." [10]

Thus, these operative sections of the Act are all keyed exclusively to acquisitions or proposed acquisitions of property. By their terms, none of these sections would make relocation benefits available to persons given a written order to vacate property in the absence of an acquisition or proposed acquisition. These sections would apply awkwardly, if at all, to persons "displaced" under plaintiffs' construction of the written order clause.

[10] The quoted language is from Section 203, 42 U.S.C. 4623. The language in Section 204, 42 U.S.C. 4624, varies immaterially: "prior to the initiation of negotiations for acquisition of such dwelling." See the text of Section 204 at page 5, *supra.*

The extent to which plaintiffs' theory clashes with the four operative sections of the Act is well illustrated by the facts of the *Cole* case. Since the *Cole* plaintiffs were ordered to vacate Sky Tower more than a year after the Department acquired it, and not as a result of the Department's acquisition,[11] the *Cole* plaintiffs apparently would not be eligible for moving and related expenses under Section 202 of the Act (42 U.S.C. 4622), or for relocation assistance advisory services under Section 205 (42 U.S.C. 4625), even though, on their theory, they would be "displaced persons" under the definition of Section 101(6).

The availability of replacement housing benefits under Section 204 of the Act, 42 U.S.C. 4624, would also be distorted under plaintiffs' construction of the written order clause. Since Section 204 permits replacement housing benefits to be paid only to persons who lawfully occupied their dwellings "for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling," it is doubtful that all the *Cole* plaintiffs would be eligible for benefits. Even if the 90-day period was deemed to run from the date of the actual acquisition of the property by the Department,[12] only those plaintiffs who

[11] The *Cole* plaintiffs expressly disavow reliance on the "acquisition" clause of Section 101(6), which would require that they had moved from Sky Tower "as a result of the acquisition of such real property" (42 U.S.C. 4601(6)). 77-1463 Br. 15 & n.17.

[12] Since there were no "negotiations for acquisition" prior to the transfer of title from the mortgagee to the Depart-

happened to have been living in Sky Tower for 90 days prior to the transfer of title would be eligible for replacement housing benefits, although the order to vacate was issued 15 months after the transfer of title. This anomaly provides further evidence that the statutory scheme of relocation benefits was meant to be triggered by an acquisition, not by a written order to vacate unconnected with an acquisition.

In contrast, our construction of the written order clause meshes well with the operative sections of the Act. If the written order of the acquiring agency means a written order issued in connection with an acquisition or proposed acquisition, then when tenants move in response to such an order it follows that "the acquisition of real property * * * will result in the displacement" of those tenants for purposes of Sections 202 and 205. By virtue of the written order clause, there is no need to wait for the acquisition actually to take place before the benefits become available under these sections, and their availability does not depend on whether the acquisition does ultimately take place.

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ment, in the sense that the term "negotiations" is used in Section 301 of the Act, 42 U.S.C. 4651, it may be that none of the *Cole* plaintiffs would be eligible for replacement housing benefits under Section 204, even assuming that they qualify as "displaced persons." The tying of Section 204 to "negotiations for acquisition"—and hence to the "uniform policy on real property acquisition practices" set forth in Section 301—supports Judge Wilkey's view (77-1463 Pet. App. 30A) that the Act does not apply to involuntary acquisitions such as the ones involved in these cases.

Similarly, under our construction of the written order clause the tying of replacement housing benefits under Section 204 to the initiation of negotiations for acquisition is rational, since the written order to vacate will ordinarily be issued roughly contemporaneously with the acquisition. Under this construction the 90-day restriction has a logical purpose, since it will generally avoid the need to make replacement housing payments to persons who move onto the property after the acquisition process has begun. At the same time, tenants who are required to move by the written order issued in connection with the acquisition will be immediately eligible for the replacement housing benefits without regard for the timing or the ultimate outcome of the actual acquisition.

Further support for our construction of the written order clause is provided by Section 217 of the Act, 42 U.S.C. 4637, which extends the benefits of the Act to persons displaced by "code enforcement, rehabilitation, and demolition programs" carried out under specified federal statutes.[13] On the interpretation of the written order clause urged by plaintiffs, the persons covered by Section 217 would already be covered

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[13] These are programs receiving federal financial assistance under Title I of the Housing Act of 1949, 42 U.S.C. 1450 *et seq.*, and Title I of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 *et seq.* With the enactment of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, the initiation of new programs under these two statutes came to an end.

by the Act, since they would have been ordered by an agency that had previously acquired the property to vacate the premises in order that a code enforcement, rehabilitation, or demolition program could be completed. The need perceived by the drafters to include a special section to provide coverage for such persons suggests that it was not contemplated that they would be covered by the general terms of the statute.

C. The Legislative History Establishes That the Relocation Act Was Intended To Provide Benefits Only to Persons Forced To Move as a Result of an Acquisition Or a Proposed Acquisition of Property

The legislative history of the Relocation Act is extensive and complex. Proposals for relocation legislation were under consideration by Congress for almost a decade and produced a number of hearings, dozens of bills, and several House and Senate reports. From all this material, two relevant points emerge: From the beginning, the Relocation Act was designed to alleviate the burdens imposed by governmental acquisitions of private property. And the definition of "displaced person," which underwent several changes in the course of the statute's consideration, was intended throughout to provide eligibility for relocation benefits only to persons displaced by acquisitions or proposed acquisitions of property.

Prior to the 1960's, Congress had enacted several statutes providing relocation benefits or services for persons displaced when particular federal agencies

acquired land for particular projects,[14] but there was no general legislation governing federal land acquisition or relocation policies. Accordingly, relocation benefits varied widely from program to program. In 1961, recognizing a need for uniform legislation in this area, the House Public Works Committee established the Select Subcommittee on Real Property Acquisition. The Select Subcommittee was charged with the responsibility of conducting a comprehensive study

> in order to determine whether owners, tenants, and other persons affected by the acquisition of real property in Federal or federally assisted programs receive fair and equal treatment, and adequate compensation, considering the value of their property and the losses and expenses they incur on being required to move from their homes, farms, or business locations.

House Select Subcomm. on Real Property Acquisition, *Study of Compensation and Assistance for Persons*

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[14] The pre-1960 statutes included the Tennessee Valley Authority Act of 1933, ch. 32, 48 Stat. 58, as amended, ch. 836, 49 Stat. 1075, 1080 (1935), which gave the TVA the authority to "advise and cooperate" in the "readjustment" of persons displaced from land acquired by TVA; the Act to Authorize Certain Construction of Military and Naval Installations, etc., ch. 434, Section 501(b), 65 Stat. 364 (1951), which provided for reimbursement to tenants and landowners of moving and related expenses in connection with the acquisition of properties for military use; and the Act of May 29, 1958, Pub. L. No. 85-434, 72 Stat. 152 (43 U.S.C. (1964 ed.) 1231 (repealed 1971)), which provided for repayment of expenses incurred as a result of acquisitions of property for the construction, maintenance, or operation of developments under the jurisdiction of the Secretary of the Interior.

Affected by Real Property Acquisition in Federal and Federally Assisted Programs, Committee Print No. 31, 88th Cong., 2d Sess. 1 (1964) (hereafter "*Select Subcomm. Study*"). The result of the Subcommittee's study was a lengthy report recommending legislation to provide uniform standards for federal land acquisition programs, including provisions for relocation benefits for landowners and tenants displaced by those programs. *Select Subcomm. Study, supra*, at 147.

The "Fair Compensation Act" proposed by the Subcommittee, like the ultimate Relocation Act, provided relocation benefits to persons falling within the definition of "displaced person." That term was defined to include a family or individual who moves from real property "as a result of the acquisition or imminence of acquisition of such real property, in whole or in part, by a Federal or State agency." *Select Subcomm. Study, supra*, at 157-158 (Sections 115 (2)(C) and 115 (2)(D) of the proposed Fair Compensation Act). The necessary connection between the acquisition and the availability of relocation benefits was also made clear in the operative sections of the proposed statute. Section 107(a), for example, provided in pertinent part (*Select Subcomm. Study, supra*, at 151):

> If the head of any Federal agency acquires real property for public use in a State, or the District of Columbia, he shall make fair and reasonable payments to displaced persons * * *.

Similarly, Section 108(a) made "relocation assistance program[s]" available to displaced persons under the

same condition—that the head of a federal agency "acquires real property for public use" (*id.* at 152).

In accordance with its purpose of establishing uniform standards of relocation benefits for federal programs, the Fair Compensation Act proposed to repeal all the pre-existing federal relocation benefit provisions. See *id.* at 159 (Fair Compensation Act, Section 118). All but one of those statutes provided relocation benefits only when the displacement was caused by an acquisition of property. The exception was the relocation benefits provision for Urban Renewal projects, which was contained in the Housing Act of 1964, ch. 649, Sections 305, 310, 78 Stat. 786, 788-790, and which provided benefits for persons displaced from Urban Renewal areas by (1) the acquisition of real property by a public agency, (2) code enforcement activities, or (3) rehabilitation activities. 78 Stat. 788. Since the proposed Act was limited to displacements caused by an "acquisition or imminence of acquisition," a special section had to be added to it to ensure that the Urban Renewal relocation benefits provision remained in force. That section, which was Section 113 of the Fair Compensation Act, ultimately became Section 217 of the Uniform Relocation Act, 42 U.S.C. 4637 (see pages 31-32, *supra*). The fact that a special section was created and maintained in the new Act to preserve the only federal relocation benefit provisions not keyed to an acquisition of property[15] indicates that the general

[15] Respondents in *Cole* refer to Section 123 of the Housing Act of 1954, 68 Stat. 596, 599-600, as earlier statutory "relocation provisions" that were not triggered by an acquisition.

provisions of the Relocation Act were not intended to create rights to relocation benefits outside the context of acquisitions of property.

The Fair Compensation Act was introduced in the 89th Congress, in 1965, as S. 1201. A shorter version, which contained the same relocation provisions as the Fair Compensation Act, was introduced as S. 1681 and entitled the Uniform Relocation Act of 1966. Similar bills, but less comprehensive in scope, were introduced in the House. See Title IV of H.R. 7984; Title V of H.R. 6501. The Senate Committee on Government Operations reported favorably on S. 1681. S. Rep. No. 1378, 89th Cong., 2d Sess. (1966).[16] As the Select Subcommittee Report had done, the Senate Report on S. 1681 made it clear that the statute was intended to provide benefits for those displaced by acquisitions of property. The Report stated:

> The purpose of S. 1681, as amended, is to establish a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property for Federal and federally assisted programs, and by other activities undertaken in connection with programs authorized by title I of the Housing Act of 1949, as amended [Urban Renewal Programs]. [*Id.* at 1.]

77-1463 Br. 21; compare 77-874 Br. 8. That provision was not a relocation benefits statute, but a statute providing mortgage insurance to potential mortgagees to encourage the development of housing that would "assist in relocating families to be displaced as the result of" government action. 68 Stat. 599.

[16] The Senate Committee determined that the land acquisition provisions, which were included in S. 1201 but not in S. 1681, were too complex to be dealt with at that time. Therefore S. 1681 was selected over S. 1201 as the appropriate legislation to report out of committee. See *id.* at 20.

The definition of "displaced person" in S. 1681, when introduced, was the same as it had been in the proposed Fair Compensation Act: a person was deemed displaced if he moved "as a result of the acquisition or imminence of acquisition" by a federal or state agency of the property on which he lived. During the hearings on the bill, however, the phrase "or imminence of acquisition," was criticized as ambiguous.[17] In response to those criticisms, the Committee amended the definition by changing "or imminence of acquisition" to "or reasonable expectation of acquisition." As the Committee reported, this change was adopted

> to remove some of the ambiguities surrounding the meaning of "imminence" and to make it amply clear that this legislation applies to persons who move from property to be acquired in connection with a Federal or federally assisted program when or shortly after the proposed project is announced, and when the announcement is made substantially prior to the time the project is to be put into effect.

S. Rep. No. 1378, 89th Cong., 2d Sess. 9 (1966).

[17] *Hearings on S. 1201 and S. 1681 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations*, 89th Cong., 1st Sess. 55 and 90 (1965).

S. 1681 passed the Senate, 112 Cong. Rec. 16745 (1966). But the House Committee failed to report it out by the end of the 1966 legislative session, and it therefore was not enacted by the 89th Congress.[18]

The bill was reintroduced in the 90th Congress as part of the Intergovernmental Cooperation Act, S. 698. The first six titles of that larger bill were taken from S. 651, the Intergovernmental Cooperation Act of 1965, which had failed to pass the 89th Congress; two of the titles constituted the former S. 1681, the Uniform Relocation Act of 1966.

Again it was clear that the Relocation Act titles were intended to provide benefits in cases of displacements caused by governmental acquisitions of property. See S. Rep. No. 1456, 90th Cong., 2d Sess. 24 (1968). Senator Muskie, when introducing the bill in the Senate, stated that it "established a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property in Federal and federally assisted programs so that as far as practical such persons shall be left not worse off economically." 114 Cong. Rec. 24056 (1968). Similarly, the language of the definitional sections was the same as it had been

[18] Although the House did not pass S. 1681, both the House and the Senate in the 89th Congress passed a similar but more limited relocation provision applicable to the Department of Housing and Urban Development. That provision was contained in Title IV of the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 486. The provision was repealed by uncodified Section 220(a)(8) of the Relocation Act, Pub. L. No. 91-646, 84 Stat. 1903.

in the Senate Committee's 1966 version, including the reference to persons displaced "as a result of the acquisition, or reasonable expectation of acquisition, of * * * real property, in whole or in part, by a Federal or State agency." Section 112(4), 114 Cong. Rec. 24049-24050 (1968). The Senate Committee in the 90th Congress made a number of changes in the relocation provisions of the bill, but the basic purpose and the definitional language remained unchanged. The purpose was still to provide "fair and equitable treatment of people displaced by acquisitions." S. Rep. No. 1456, *supra*, at 11, 24.

S. 698 passed the Senate without debate. 114 Cong. Rec. 24057 (1968). But the House passed only the six titles constituting the Intergovernmental Cooperation Act. The two titles constituting the Uniform Relocation Act were determined to be more properly within the jurisdiction of the House Public Works Committee, so once again the Uniform Relocation Act died in the House.[19]

The next year the bill was again introduced, this time as S. 1 of the 91st Congress. The new S. 1 tracked its predecessors, S. 1681 and S. 698, very closely. It also tracked the Highway Relocation Assistance provisions of the Federal-Aid Highway Act of 1968, Pub. L. No. 90-495, 82 Stat. 830, which afforded relocation benefits to persons displaced "as a result of

[19] See S. Rep. No. 91-488, 91st Cong., 1st Sess. 7 (1969). While the conferees on S.698 acceded to the House' deference to its Public Works Committee, they were said to be "in agreement on the desirability of congressional action on a uniform relocation and acquisition bill * * *." *Ibid.*

the acquisition or reasonable expectation of acquisition of * * * real property, which is subsequently acquired, in whole or in part, for a Federal-aid highway" (82 Stat. 834).[20] See S. Rep. No. 91-488, 91st Cong., 1st Sess. 2 (1969). As the language of the Federal Aid Highway Act makes apparent, that Act was in turn based on the Uniform Relocation Act titles of S. 698. See S. Rep. No. 1340, 90th Cong., 2d Sess. 2 (1968).

The Senate Committee reported the bill (with minor amendments), and the Senate passed it without significant debate. S. Rep. No. 91-488, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 31533-31535 (1969). As reported and passed by the Senate, the bill still clearly applied only to displacements caused by acquisition or the reasonable expectation of acquisition of property. The "Declaration of Policy" section of S. 1 provided, as had its predecessors, that the purpose of the Act was

> to establish a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property in Federal and federally assisted programs to the end that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

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[20] The Highway Relocation Assistance provisions of the Federal-Aid Highway Act were repealed by uncodified Section 220(a)(10) of the Relocation Act, Pub. L. No. 91-646, 84 Stat. 1903.

S. 1, Section 201, 115 Cong. Rec. 31372 (1969). And the definition of "displaced person" still spoke of persons forced to move "as a result of the acquisition or reasonable expectation of acquisition of real property." S. 1, Section 105, 115 Cong. Rec. 31372 (1969).

In the House Committee, the bill underwent a number of changes. First, the Committee substantially reorganized and shortened Title II of S. 1, which contained the relocation assistance provisions. In so doing the Committee combined the preamble and the "Declaration of Policy" section of S. 1 into a new "Declaration of Policy" section, Section 201 of the new bill, ultimately enacted as 42 U.S.C. 4621. See 116 Cong. Rec. 42133 (1970). Although the new Declaration of Policy did not refer to acquisitions of property, but only to "persons displaced as a result of Federal and federally assisted programs," it is clear from the House Report that the legislation was still directed at displacements caused by acquisitions of property. The Committee stated that the bill "provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal and federally assisted programs." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 3 (1970).

The more significant change made by the House Committee was in the definition of "displaced person." The House Committee amended the language employed in S. 1 and substituted the language that was ultimately enacted. Thus, in place of the phrase "as a result of the * * * reasonable expectation of

acquisition of real property," the House Committee substituted the phrase "as a result of the written order of the acquiring agency to vacate real property." Plaintiffs suggest that this substitution expanded the scope of the statute to reach beyond the context of acquisitions of property. The contemporaneous materials suggest otherwise.

The House bill that paralleled S. 1 was H.R. 14898. It defined "displaced person" slightly differently from S. 1, as follows:

> The term "displaced person" means any person who moves from real property * * * as a result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for a Federal program or Federal grant-in-aid program * * *.

H.R. 14898, printed in *Hearings Before the House Comm. on Public Works*, 91st Cong., 1st & 2d Sess. 14 (1970). S. 1, as it passed the Senate, used a similar definition but without the requirement that the property be subsequently acquired. 115 Cong. Rec. 31372 (1969); see page 41, *supra*.[21] Thus, under the Senate bill a person who moved in reasonable expectation of an acquisition would be entitled to relocation benefits whether or not the property was ultimately acquired, while under the House bill relocation benefits would be available only if the property was in fact acquired. In the course of the House hearings on the two bills, various witnesses commented on the difference in the language of the definition. See *Uniform Relocation Assistance and Land Acquisition Policies—1970: Hearings on H.R. 14898, H.R. 14899, S. 1 and Related Bills Before the House Comm. on Public Works*, 91st Cong., 1st & 2d Sess. 137, 282, 416, 541, 595-596, 1028 (1969-1970) (hereafter cited as *1970 House Hearings*). A number of them criticized the phrase "or reasonable expectation of acquisition" as too vague. See *id.* at 137, 281, 416, 595-596, 1028. Several of the witnesses suggested that instead of the vague term "expectation of acquisition," the statutory benefits should be triggered by a more readily discernible fact, such as some official act. One witness suggested (*id.* at 281):

> It would be helpful if a more specific term than "reasonable expectation" were used. We feel that the program would be more easily handled if reasonable expectation were defined as a specific time related to the initiation of negotiations or the authorization to acquire the right of way.

The Department of Transportation representative suggested that relocation benefits should not be available simply because of a "reasonable expectation" of acquisition. Instead, he testified (*id.* at 596):

> We think some limitation is desirable. Relocation payments should be limited to persons actually displaced or who move due to some official act of the public authorities such as a notice of condemnation.

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[21] The requirement that the property be subsequently acquired had been embodied in the Highway Relocation Assistance provisions of the Federal-Aid Highway Act, Pub. L. No. 90-495, 82 Stat. 834; see pages 39-40, *supra*.

Finally, the representative from the Department of Housing and Urban Development recommended a similar solution for resolving the difference between the House and Senate bills (*id.* at 1027-1028):

> The provisions in the House bills require a person to remain in his dwelling until the property is actually acquired to know if he can qualify for relocation assistance. We believe this produces unnecessary hardship and prevents an orderly relocation process. * * * *
>
> Relocation payments should not be made to those who move on the basis of speculation regarding the intent to take their property. We favor a provision limiting reimbursement to persons [who move] after some official act which clearly threatens displacement even though the property is never subsequently acquired.

The representatives from both the Department of Transportation and the Department of Housing and Urban Development referred the committee to their relocation regulations, both of which provided for eligibility on the basis of an "official act" that made it sufficiently certain that the property would be acquired to justify making relocation payments in advance of the actual acquisition. The Transportation regulations governing displacements under the Highway Relocation Assistance Program provided that one moves as a result of the "reasonable expectation of acquisition of such real property" if he or she moves after notification that the property is to be acquired (*id.* at 1007). The Housing and Urban Development regulations governing relocations for Urban Renewal

projects provided that a resident would be deemed displaced by an acquisition of property "if the vacation of the real property occurs after the Agency has acquired legal or equitable title or right to possession and has ordered the site occupant to vacate the real property" (*id.* at 1069).

It was in the light of these suggestions that the House Committee altered the language of the definition of "displaced person." The Committee replaced "or reasonable expectation of acquisition" with "or as the result of the written order of the acquiring agency to vacate real property." The Committee thus compromised between the Senate bill and the House bill by permitting relocation benefits to be paid even in the absence of an actual acquisition, but only on the occurrence of an official act: the issuance of a written order to vacate.

The contemporaneous materials support this interpretation of the House Committee's action. Perhaps most significant, little attention was paid to the change either in the House or the Senate. It is hard to credit the thesis that the House Committee intended to work a major expansion in the scope of the definition of "displaced person," and thus in the scope of the Act, with only a minor reference in the House Report and with almost no response from the Senate. The reference in the House Report, though brief, is illuminating. The Report explained that under the newly drafted written order clause, "[i]f a person moves as the result of such a [written] notice to vacate, it makes no difference whether or not the real

property actually is acquired." Thus, the Report suggests that the written order clause, like its predecessors, was intended to cover cases in which a tenant moves in advance of an acquisition, even if the "acquiring agency" ultimately fails to acquire the property. H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

Several witnesses noted in the course of the House hearings that the House bill would not provide benefits for persons displaced from property other than in the context of an acquisition. See *1970 House Hearings*, *supra*, at 234, 253, 270, 360. The comments were provoked in part by the failure of the House bill to contain a provision continuing in force the availability of relocation benefits for persons displaced by code enforcement and rehabilitation in Urban Renewal projects. But the comments went beyond the absence of an Urban Renewal relocation provision, and several of the witnesses suggested amendments that would have expanded the scope of the Act more generally to cover persons displaced in the absence of an acquisition. See *1970 House Hearings*, *supra*, at 234, 360. The House Committee included the Urban Renewal relocation provision, which became Section 217 of the Relocation Act (42 U.S.C. 4637), but it failed to include any of the broader amendments that had been suggested.

Instead of broadening the bill to encompass "non-acquisition" displacements, the House Committee narrowed the scope of the Senate bill with respect to one

special section that provided for relocation benefits in the absence of an acquisition. That section, which became uncodified Section 219 of the Relocation Act, Pub. L. 91-646, 84 Stat. 1903, extended the benefits to a limited class of persons required to move as a result of contemplated demolition of property in the Murray Hill area of New York City. The Senate had apparently concluded that these people would not be encompassed by the statutory definition of "displaced person," since title to the land had been acquired by the government years before, and acquisition preceded some of the current tenants' leases. See *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969: Hearings Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Governmental Operations*, 91st Cong., 1st Sess. 164-169 (1969); see also *1970 House Hearings*, *supra*, at 66-69. But while the Senate version of the bill had extended special protection to the Murray Hill displacees by the use of general language, the House version narrowed the language to make it clear that the Murray Hill project was the only one of its kind that was to be brought within the coverage of the Relocation Act. Moreover, after noting that a special exception had been made for the Murray Hill residents, the House Report warned that "[t]his section is to cover a specific situation resulting from the acquisition and long-term holding by the Federal Government of certain property in the City of New

York. It is not to be considered as a precedent of any nature." H.R. Rep. No. 91-1656, *supra*, at 21.[22]

The debate on the House floor was brief, and in no way suggested that the House members considered that the House bill had expanded the reach of the Act beyond the context of acquisitions. Indeed, a number of the members who spoke in favor of the bill (116 Cong. Rec. 40167-40172 (1970)) specifically characterized it as a statute designed to provide benefits for persons displaced by acquisitions of property. See 116 Cong. Rec. 40167 (1970) (Rep. Edmondson); *id.* at 40169 (Rep. Cleveland); *id.* at 40170 (Rep. Johnson); *id.* at 40171 (Rep. Brotzman); *id.* at

[22] The *Alexander* plaintiffs point to a statement made in the House Hearings and an excerpt from the House Report in support of their contention that the House Committee vastly broadened the reach of the definition of "displaced person" with its adoption of the written order clause (77-874 Br. 26-28). Neither selection supports their position. Rep. Mink's statement submitted to the House Committee reflected her understanding that the persons displaced by the projects she referred to would be eligible for relocation benefits under both the Senate and the House bills as they were introduced, and without the written order clause. See *1970 House Hearings*, *supra*, at 105. The excerpt from the House Report refers to the Post Office Department's mode of acquiring property for the construction of new facilities. Noting that the Department often did not directly acquire property for its facilities but instead used a system of options and leasebacks, the House Report emphasized that the mode of acquisition was not important. "The controlling point," the Report stated, "is that the real property must be acquired for a Federal or Federal financially assisted program or project." H.R. Rep. No. 91-1656, *supra*, at 4. Thus, the Report was noting that acquisitions of the type employed by the Post Office Department would fall within the acquisition clause, not the written order clause.

40171-40172 (Rep. Annunzio). See also 116 Cong. Rec. 42506 (1970) (Rep. Edmondson); *id.* at 42507 (Rep. Hall).

When the bill returned to the Senate, the changes made by the House Committee were accepted without a conference and almost without debate. The only reference to the change in the definition of "displaced person" appeared in a memorandum submitted by Senator Percy on behalf of the Administration. 116 Cong. Rec. 42139 (1970). In analyzing differences between the House and Senate bills, the memorandum read, in relevant part:

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, or written notice to vacate, real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition.

Consistently with the House Report, this memorandum reflected the understanding that the House bill narrowed the scope of the Senate language. The House version prevailed over the Senate's "broader definition," and the language put forward by the House became the written order clause in Section 101(6) of the Act.

As Judge Wilkey concluded in his dissenting opinion below, the change by the House "limited the definition, and certainly did not vastly expand it by covering all persons displaced with notice from prop-

erty already owned and acquired by the agency" (77-1463 Pet. App. 41A (emphasis omitted)). As Judge Wilkey also concluded, the House and Senate versions of the written order clause "shared the same purpose," which was "to cover those given notice who moved prior to acquisition or who moved even though the anticipated acquisition did not occur" (*ibid.* (emphasis omitted)).

The legislative history of the written order clause thus supports the view that the clause was not intended to have the broad meaning ascribed to it by plaintiffs. It was not meant to expand the scope of the Act beyond the context of property acquisitions. It was meant to supplement the acquisition clause by permitting the tenant to depart prior to the actual acquisition of the property without losing his or her relocation benefits.[23]

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[23] Plaintiffs place great weight on statements made by Senator Baker in the course of an unsuccessful 1972 effort to amend the Relocation Act. See 118 Cong. Rec. 12343 (1972) and *Proposed Amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970: Hearings on S. 1819 and Related Bills Before the Subcomm. on Roads of the House Comm. on Public Works*, 92d Cong., 2d Sess. 58 (1972); 77-1463 Br. 24 & n.39. Such retrospective statements by individual legislators are of doubtful relevance in any event. But as we noted previously (see note 6, *supra*), S. 1819 was directed at the limitation of the Act to federal projects and state agency projects using federal financial assistance. The bill would have extended the Act to acquisitions for all federally assisted projects; it would not have expanded the definition of "displaced person."

D. Department Regulations Support the Narrow Interpretation of the Written Order Clause

The Department of Housing and Urban Development has promulgated regulations governing the distribution of relocation benefits to persons eligible for them under the Relocation Act. See 24 C.F.R. Part 42. Those regulations support our construction of the written order clause, by making it clear that the general provisions of the Act apply only to displacements caused by acquisitions of property.

The definition of "displaced person" in the regulations includes only persons who are displaced "as a result of acquisition of such real property * * *." 24 C.F.R. 42.20(d)(2), 42.55(a)(2)(i).[24] The regulations further provide that displacement "as a result of the acquisition of real property" includes displacement which is a result of:

> (1) The obtaining by the acquiring agency of title to or the right to possession of such real property for a project;
>
> (2) The written order of the acquiring agency to vacate such property for a project; or
>
> (3) The issuance by the acquiring agency of a written notice to the owner of its intent to acquire the real property for such project * * *.

24 C.F.R. 42.55(e).

Plaintiffs seize on the separate listing of "written order" and "written notice * * * of * * * intent to acquire" to support their reading of the written order

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[24] The definition also includes persons falling within the special relocation provision contained in Section 217 of the Act, 42 U.S.C. 4637, which is not applicable in this case. 24 C.F.R. 42.20(d)(3).

clause as requiring that benefits be provided outside the context of an acquisition. But the regulations point the other way. A displacement that is the result of the "written order of the acquiring agency" is specifically identified as a displacement "as a result of the acquisition of real property." 24 C.F.R. 42.55(e). Moreover, the "written order" and "written notice" provisions in the regulations apply quite logically in the context of an acquisition. The "written notice" provision applies to pre-acquisition notices of intent to acquire property, while the "written order" provision applies to pre- or post-acquisition orders to move from the property. The critical factor, as the regulations make clear, is that the written notice or the written order—whether prior to, contemporaneous with, or subsequent to the acquisition—is associated with the acquisition. 24 C.F.R. 42.20(d)(2), 42.55(e). See also HUD Handbook 1371.1 REV, *Relocation Policies and Procedures*, ch. 4 § 1a(1) (1975).[25]

[25] Plaintiffs make the related argument (77-874 Br. 25; 77-1463 Br. 17-19) that the written order clause must apply to post-acquisition orders because an agency that has not yet acquired a property cannot "order" residents on the property to vacate. But as we have noted, the written order clause applies to both pre-acquisition and post-acquisition orders, as long as the written order is made in connection with the acquisition. The written order clause was included in the statute to provide a more certain test for determining when a tenant's departure was caused by an acquisition, either impending or recently completed. And of course an agency that has not yet legally acquired a property can, in a realistic and effective sense, "order" tenants to vacate it. In denying this, plaintiffs would deprive the written order clause of its original and obvious purpose of protecting those who move in anticipation of an acquisition, whether or not the acquisition ultimately takes place.

The close relationship in the Department regulations between the written notice or order and the acquisition accords with the guidelines to the construction of the Relocation Act published by the General Services Administration in 1974. The GSA guidelines, which must be followed by all federal agencies in applying the Act,[26] provide that in order to qualify for relocation benefits, a person must have moved as a result of an acquisition or

> as a result of the receipt of a written notice to vacate which may have been given before or after initiation of negotiations for acquisition of the property as prescribed by regulations issued by the head of the Federal agency * * *.

General Services Administration, *Federal Management 74-8, Attachment A, ch. 1.2c(2)(a): Guidelines for Agency Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646* 2 (1974).[27] Thus, while the GSA guidelines give each agency some freedom to prescribe the timing of the written notice or order to vacate, they once again underscore the point that the written notice or order does not stand on its own: it must be issued in connection with an acquisition or proposed acquisition of property in order to satisfy the requirements of the statutory definition of "displaced person."

[26] See Executive Order No. 11717, 3 C.F.R. 766 (1971-1975 Compilation).

[27] The GSA guidelines were subsequently codified as 34 C.F.R. Part 233.

II.

THE DEPARTMENT'S ACQUISITION OF SKY TOWER AND RIVERHOUSE TOWERS WAS NOT "FOR A PROGRAM OR PROJECT" UNDERTAKEN BY A FEDERAL AGENCY

A. It Is the Acquisition, Not the Written Order, That Must Be for a Federal or Federally Assisted Program Or Project

A second point of dispute about the proper construction of the definition of "displaced person" concerns the phrase "for a program or project undertaken by a Federal agency, or with Federal financial assistance." 42 U.S.C. 4601(6). Plaintiffs contend that the definition is satisfied if either the acquisition or the written order to vacate is "for a [federal] program or project." Again, we read the definition more restrictively. In our view, it is the acquisition that must be "for a program or project," not the written order to vacate.

In large part, our argument on this point follows from the analysis in Part I, *supra*. As we explained there, the written order clause was a substitute for the phrase "or reasonable expectation of acquisition" in both the Senate and House bills. In each of the earlier versions of the bill, then, it was clear that it was the acquisition of property that had to be for a federal program or project.

The House Committee's insertion of the written order clause did not alter the definition in this respect. The House Report is unambiguous on this point. It states:

> It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. *The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project.*

H.R. Rep. No. 91-1656, *supra*, at 4 (emphasis added).

The structure of the definition of "displaced person" similarly supports the view that it is the acquisition that must be "for a [federal] program or project." The written order clause functions as an appositive to the acquisition clause, not as a parallel clause. It provides for a written order as a permissible connection between the acquisition and the displacement; it does not elevate the particular connection, or means of displacement, to an independent event that has its own statutory consequences without regard for the presence of an acquisition. The written order clause is in essence parenthetical, so that the definition should be interpreted as if it read:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property * * * (or as the result of the written order of the acquiring agency to vacate real property) for a program or project undertaken by a Federal agency * * *.

Accordingly, even if plaintiffs were in some sense ordered to move for a federal program or project, that would not satisfy the definition of "displaced per-

son" unless the property was acquired for that program or project. *Caramico* v. *Secretary of the Department of Housing and Urban Development*, *supra*, 509 F.2d at 698-699; *Harris* v. *Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), opinion adopted, 555 F.2d 1357, 1359 (8th Cir.), cert. denied, 434 U.S. 927 (1977). The Department's regulations are in accord. 24 C.F.R. 42.20(d)(2).

B. The Acquisitions in These Cases Were Not for a Federal Program Or Project

The Department of Housing and Urban Development acquired Sky Tower and Riverhouse Towers only after a default by the project sponsor and assignment to the Department of either the mortgage (in the case of Riverhouse Towers) or title to the property (in the case of Sky Tower). Both acquisitions occurred because the purpose of the Department's program—to encourage private construction and maintenance of low-income housing—met with failure. The Department thus did not acquire the properties for a federal program or project; instead, the acquisitions in both instances marked the last step in the failure of a private program to which the Department had extended direct and indirect financial support.[28]

As the court of appeals stated in *Caramico* v. *Secretary of the Department of Housing and Urban Development*, *supra*, 509 F.2d at 698, acquisitions of

[28] See note 6, *supra*.

this kind are "random and involuntary"—not the kind envisioned by the Relocation Act. The *Caramico* court noted that the Relocation Act

> contemplates normal government acquisitions, which are the result of conscious decisions to build a highway here or a project or hospital there. In such cases, the acquisition of property and the relocation of certain individuals is a necessary first step in the project. Default acquisitions by the FHA, however, embody no conscious governmental decision at all.

Id. at 698-699.

Plaintiffs quarrel with the application of the analysis in *Caramico* to these cases, contending that neither of the acquisitions here was truly involuntary. The acquisition in *Alexander*, plaintiffs point out, came in the course of a foreclosure sale, and the acquisition in *Cole* occurred only after the Department had declined to increase the mortgage insurance coverage for a second time. While the acquisitions may not have been involuntary in the sense that the Department had no choice but to acquire the property, the acquisitions were indisputably made in contexts in which the Department was forced to elect between two unattractive alternatives, and it chose what it perceived as the lesser evil. Such acquisitions, made in order to make the best of a bad situation, are not in any realistic sense made "for a [federal] program or project."

The Relocation Act was intended to provide benefits in the case of acquisitions of a different character. The acquisitions envisioned by the Act are acquisitions

involving a governmental "taking" for a "public use." As we noted in Part I, *supra*, the land acquisition and the relocation provisions of the Relocation Act had been closely related from the time that the Select Subcommittee first proposed that land acquisition policies and relocation assistance be treated in a single piece of legislation. In view of the Subcommittee's joint treatment of the two problems, it is not surprising that the acquisitions for which relocation payments were envisioned were acquisitions of property "for public use." See *Select Subcomm. Study*, *supra*, at 151 (Fair Compensation Act, Section 107(a)).

The relationship between the concept of "public use" and the kinds of "programs or projects" for which relocation benefits were intended is equally evident in the legislative materials accompanying the final version of the Relocation Act. The House Report on the Act stated:

> The need for [relocation benefits] arises from the increasing impact of Federal and federally assisted programs as such programs have evolved to meet the needs of a growing and increasingly urban population. In a less complex time, Federal and federally assisted public works projects seldom involved major displacements of people. There was relatively little taking of residential or commercial property for farm-to-market routes or for reservoirs or public buildings. Indeed, local support for such projects often resulted in little, if any, cost for land acquisition or right-of-way. However, with the growth and

> development of an economy which is increasingly urban and metropolitan, the demand for public facilities and services has increasingly centered on such urban areas, and the acquisition of land for such projects has become the most difficult facet of many undertakings by public agencies. Also, a major public project—be it a highway, urban renewal project, or hospital—inevitably involves the acquisition and clearance of sites which now provide residential, commercial or other services.

H.R. Rep. No. 1656, *supra*, at 2. Similarly, according to the Senate Report, the bill was designed "to permit the Federal Government to deal consistently and fairly with all those whose property is taken for public projects and all those who are displaced from their homes and businesses." S. Rep. No. 91-488, *supra*, at 2. Moreover, in discussing the definition of the term "displaced," the Senate Report characterized the program or project for which an acquisition must be intended as being "for a public improvement constructed or developed by or with funds provided in whole or in part by the Federal Government." *Id.* at 9. Accordingly, because the acquisitions of Sky Tower and Riverhouse Towers were not intended to serve a "public use" of the kind associated with a "taking" of the property by the federal government, the acquisitions do not satisfy the requirement that they be made "for a [federal] program or project."

The *Cole* plaintiffs argue (77-1463 Br. 30-33) that if the Relocation Act requires that the acquisition be

"for a [federal] program or project," the acquisition in this case qualifies under that test because it was "a fully expected and consciously planned-for result of the Section 236 [housing] program." In essence, plaintiffs' argument is that defaults were anticipated under the Section 236 mortgage insurance program, and the consequent "acquisition" of Sky Tower was therefore not random and involuntary, but "definitely voluntary and deliberate" (77-1463 Br. 33).

Section 236 of the National Housing Act, 12 U.S.C. 1715z-1, is the provision under which the Sky Tower mortgage was insured. Naturally, in providing for mortgage insurance, Congress anticipated that occasional defaults would occur. But the expectation that some defaults, foreclosures, and transfers of title to the Department would occur does not render those acquisitions "for a program or project." The acquisitions occur as the result of predictable but unfortunate *failures* in the mortgage insurance program; they are not any part of the *purpose* of the program. It stretches the terms beyond recognition to characterize the default acquisitions in these cases as "voluntary and deliberate" in the same sense as acquisitions of private property for a highway or a hospital.[29]

[29] On plaintiffs' theory, a person defaulting on any federal housing loan would be entitled to relocation benefits if the federal agency acquired the property following the default. The acquisition would be "for" the housing loan program.

C. The Distinction Between Persons Displaced by Acquisitions and Persons Displaced by Other Federal Action Is a Rational One

Plaintiffs suggest that the interpretation of the Relocation Act advanced by the government is a "miserly" one that does not fairly serve the purposes or policies for which the Act was designed.[30] But as we have argued, Congress intended in this Act to address only the problem of displacements caused by acquisitions of property—either through condemnation or negotiation—for public projects. Congress did

[30] In support of their contention that our construction of the Act is unduly restrictive, the *Cole* plaintiffs have cited Section 206(b) of the Act, 42 U.S.C. 4626(b), which requires that replacement housing be available before any person is required to move from his dwelling "on account of any Federal project." Plaintiffs assert that "it is clear from the facts" that the Department violated this provision. But Section 206(b) is not at issue in this case. The district court held, on other grounds, that the Department had improperly ordered the Sky Tower tenants to vacate the project. *Cole* v. *Lynn*, 389 F. Supp. 99 (D. D.C. 1975). The only issue certified for appeal was the question of the eligibility of the tenants for relocation benefits.

In any event, it is not "clear from the facts" that the Department violated Section 206(b) of the Act when it ordered the Sky Tower residents to vacate the project. For one thing, that section applies only when persons are ordered to move "on account of [a] Federal project," which is properly read *in pari materia* with the phrase "program or project" in Section 101(6) of the Act. Since Sky Tower was not acquired "for a [federal] program or project," Section 206(b) is not applicable. Moreover, the section requires only that the Secretary be satisfied that replacement housing is available. The question whether such housing is in fact available is not one for the courts to address in the first instance. See *Katsev* v. *Coleman*, 530 F.2d 176, 181 (8th Cir. 1976).

not address the difficult and quite different problem of displacement of tenants from property that is owned by a federal agency.

Because that is a different problem, adopting plaintiffs' interpretation of the Act would invite anomalous results. We have already suggested some examples: the tenants who fail to pay their rent and for that reason are ordered to move from federal property; the military personnel displaced from on-base living quarters when the base is closed or when the service decides to demolish those quarters or convert them to another use; the state university that decides to convert its long-owned residential property to college dormitories with the aid of federal funds, or to convert a dormitory to a federally financed laboratory or other facility. In all these cases the plaintiffs' theory of the written order clause in the Relocation Act would apparently require payment of the Act's benefits. It is unlikely that Congress intended any such results.

Moreover, under plaintiffs' construction of the Act, the agency acquiring the property after a default could avoid any obligation to pay relocation benefits by insisting that the mortgagee deliver the property unoccupied, as was done in the *Caramico* case (509 F.2d at 696). Inducing agencies to take this step in order to avoid the obligations of the Relocation Act would serve no discernible policy interest and might well result in greater hardship to the affected tenants.

The Department recognizes, of course, that persons displaced from government property may suffer

greatly by virtue of displacement. The Secretary of Housing and Urban Development is now examining measures that would provide some level of benefits to persons who are required to move from a Department-owned housing project but who do not qualify for benefits under the Department's interpretation of the Relocation Act. She is considering whether the Department can provide such assistance by regulation under existing program statutes or whether it must seek new legislation and authorization for funding. The appropriate eligibility criteria and levels of assistance for each kind of displacement are also under study.

Persons displaced from federally owned property may well be proper subjects for financial assistance in the future, either through legislation or administrative action. Such assistance may also be made available to persons displaced from state or even privately owned property to make way for projects receiving federal financial assistance. The Relocation Act as now written, however, does not go that far.

CONCLUSION

The judgment of the court of appeals in No. 77-874 should be affirmed.

The judgment of the court of appeals in No. 77-1463 should be reversed.

Respectfully submitted.

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